

RULIF VAN BRUNT.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

RULIF VAN BRUNT *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Claimant's original evidence transmitted to the House of Representatives.
3. Claimant's brief.
4. United States solicitor's brief.
5. Opinion of the court adverse.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December,
[L. s.] A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

COURT OF CLAIMS.

RULIF VAN BRUNT *vs.* THE UNITED STATES.

To the honorable the judges of the Court of Claims:

Your petitioner, Rulif Van Brunt, respectfully represents that he is a citizen of Schenectady county, in the State of New York, and in the year 1814 was a resident of Brooklyn, in the county of Kings and State of New York, and was the lessee of a certain lot of land in Brooklyn, aforesaid, from one John Jackson, of the same place, for the term of one year from the first day of April, 1814, to the first

day of April, 1815, at a rent of three hundred and twenty-five dollars per annum, which rent was duly paid to said John Jackson.

That your petitioner entered upon the said premises on the first day of April, 1814, and cultivated the same by putting in a crop of grain and vegetables.

That on the ninth day of August, 1814, the said premises were entered upon by the military authorities of the county, and, as he is informed, by the military raised under the charge of the committee called the "Committee of Defence" of the city of New York; and the said premises were occupied from and after the said 9th day of August, 1814, by the said military, until about the 3d day of December, 1814, and a fort called "Fort Green" was erected thereon, which was occupied by the military of the United States, and the whole premises and the crops grown and growing thereon were taken, appropriated, and destroyed by said committee, or by the military, or by those acting under their authority; and your petitioner thereby lost his entire crop, his labor, and the rent paid by him for the said premises; and was damaged thereby in the sum of ten hundred and fifty dollars.

Your petitioner further shows, that in the month of December, 1844, he applied to Congress for relief, and in the Senate on the 23d of December, 1844, the claim was referred to the Committee on Claims; March 3, 1846, referred to Committee on Claims; December 18, 1846, referred to Committee on Claims; December 13, 1847, referred to Committee on Claims; December 12, 1848, referred to Committee on Claims; January 7, 1850, referred to Committee on Military Affairs; January 22, 1850, adverse report; April 29, 1852, referred to Committee on Claims; June 9, B. S. 449, and report; February 2, 1854, referred to Committee on Claims; March 21, 1854, bill S. 290, and report; May 3, bill passed, authorizing the proper accounting officers of the Treasury Department to audit and adjust, upon principles of justice and equity, your petitioner's claim, and to pay the amount so found due, not exceeding the sum of seven hundred and fifty dollars.

Your petitioner also shows, that on the 10th of June, 1854, in the House of Representatives, the said bill was referred to the Committee on Claims; February 22, 1854, report adversely; March 3, 1855, referred by the House of Representatives to the Court of Claims. Your petitioner avers he is alone interested in the aforesaid claim.

Your petitioner, therefore, being remediless save in your honorable court, respectfully prays that your honors will take his case into consideration, and grant him the sum of ten hundred and fifty dollars, the amount of damage sustained by him, or so much thereof as he may satisfactorily prove to your honors he is entitled to for damage sustained by him, by reason of the occupancy of his lands and buildings, and appropriation and destruction of his crops by a military force in the service of the United States, and such further relief as may seem meet and proper in the premises. And, as in duty bound, your petitioner will ever pray, &c.

RULIF VAN BRUNT.

STATE OF NEW YORK, }
County of Schenectady, } to wit:

On this nineteenth day of March, A. D. 1856, before me, Stephen S. Riggs, a commissioner of deeds in and for the city of Schenectady, in the county and State aforesaid, personally appeared the above Rulif Van Brunt, and makes oath that the facts set forth in the above petition are true according to the best of his knowledge and belief.

S. S. RIGGS,
Commissioner of Deeds.

WILLIAM I. MARTIN,
J. H. PETERS,
Attorneys for petitioner.

STATE OF NEW YORK, }
County of Schenectady, Clerk's Office, } ss:

I, Marvin Strong, clerk of the county of Schenectady, do hereby certify that S. S. Riggs, esq., before whom the foregoing affidavit was subscribed and sworn, was at the time of taking the same a commissioner of deeds in and for said county, duly commissioned and qualified as such; and that I am well acquainted with the handwriting of the said commissioner, and verily believe that the signature to said affidavit and signature is genuine.

In witness whereof, I have hereunto set my hand and affixed the [L. s.] seal of the said county this 19th day of March, 1856.

MARVIN STRONG, *Clerk.*

RULIF VAN BRUNT *vs.* THE UNITED STATES.

Schedule of evidence for the petitioner.

Deposition of Jeremiah Johnson.

Deposition of Samuel Doxsey.

Deposition of John Storm.

Deposition of Henry Reid.

Deposition of Samuel Ryder.

Agreement between John Jackson and claimant.

Deposition of claimant as to death and removal of witnesses.

To the solicitor of the United States for the Court of Claims.

The evidence for the petitioner is closed and above is a schedule thereto.

RULIF ^{his} + VAN BRUNT.
mark.

Witness: JNO. D. McPHERSON.

STATE OF NEW YORK, *County of Kings, ss:*

Jeremiah Johnson, of the city of Brooklyn, in the county of Kings and State of New York, being duly sworn, doth depose and say: That he is now aged seventy-seven years; that he knew John Jackson, of

said city of Brooklyn, in his lifetime ; that he has examined the signature of John Jackson to the annexed lease or agreement ; that he has seen the said John Jackson write and is acquainted with his handwriting, and he verily believes that the signature to the annexed lease is in the proper handwriting of John Jackson, of Brooklyn, the owner of the premises in the said lease or agreement mentioned and referred to.

And this deponent further saith, that on the second day of September, in the year of our Lord one thousand eight hundred and fourteen, he was the brigadier general of the 22d brigade of the New York State infantry, and that the certificate made by this deponent and hereunto annexed is in all respects just and true.

JEREMIAH JOHNSON.

Sworn before me this 9th day of October, 1844.

JOHN VANDERBILT,

First Judge, &c., of Kings county, and a Justice of the Peace.

OCTOBER 8, 1844.

I certify that the 22d brigade of New York infantry, under my command, was ordered into the service of the United States and encamped at Fort Green, in the county of Kings, on the 2d day of September, 1814, on land then owned by John Jackson, which, with a house and barn, he had rented to Rulif Van Brunt; about half of the land whereon the fort was built, and the land whereon the brigade encamped, is included in the lease of Mr. Van Brunt. All the fence was removed from the land, and the produce of his labor destroyed before the 2d of September ; the dwelling-house was in the possession of a man named Turney, and the barn was occupied as a guard-house by my order, on the consent of John Jackson.

And I further certify that John B. Coles and John Morse, of the city of New York, and myself, appraised the damages sustained by John Jackson and several other person, occasioned by the occupation of their land for the public service and defence, and that the damage sustained by Mr. Van Brunt was not appraised by us.

JEREMIAH JOHNSON,

Brigadier General of New York Infantry.

KINGS COUNTY, ss :

Samuel Doxsey, of the city of Brooklyn, superintendent of the poor of Kings county, being duly sworn, doth depose and say : That he was a resident of the town (now city) of Brooklin during the years 1813-'14, and that he was acquainted with Rulif Van Brunt and with John Jackson. The said Rulif Van Brunt, in the year 1814, occupied a farm belonging to said John Jackson. The deponent has seen in the possession of the said Rulif Van Brunt an agreement for the letting of said farm, and that the deponent was well acquainted with the handwriting of the said John Jackson, and that the signature to said agreement is in the handwriting of the said John Jackson, as deponent verily believes ; and that sometime in the summer of 1814

the erection of fortification called Fort Green was commenced on the farm in the occupancy of said Van Brunt, by which the fences were thrown down and the farm turned into a common; and that in the first part of September in said year the deponent was ordered on duty in the 64th regiment of militia; and that said regiment, with others composing the brigade under the command of Brigadier General Jeremiah Johnson, encamped on the said farm, and occupied the barn as a guard-house, and used the straw, hay, and grain that was in said barn for the purpose of bedding, &c.; and that the said Van Brunt was compelled wholly to abandon said farm and procure a house for his family and stabling for his stock elsewhere. The deponent not being engaged in farming at that time is unable to make an estimate of the losses sustained by said Van Brunt, but feels confident that he suffered serious losses by reason of having to remove from said farm.

SAMUEL DOXSEY.

Sworn before me this 12th day of October, 1844.

JOHN VANDERBILT,
First Judge, &c.

Estimate of the damage sustained by Rulif Van Brunt by reason of the farm he occupied being taken for military purposes in the year 1814.

Rent of farm	\$385 00
Ten loads of oats.....	100 00
Seven acres of corn.....	175 00
Pasture, grass, &c.....	150 00
Seed and labor.....	150 00
	<hr/>
	960 00

John Storm, of the city of Brooklyn, being duly sworn, doth depose and say that the above estimate was made by him, and that he was acquainted with Rulif Van Brunt, and with the facts and circumstances of the case at the time they occurred, being himself engaged in the same business, and residing near the said Rulif Van Brunt.

JOHN STORM.

Sworn before me this 12th day of October, 1844.

JOHN VANDERBILT,
First Judge, &c.

Estimate of the damage sustained by Rulif Van Brunt by reason of the farm he occupied being taken for military purposes in the year 1814.

Rent.....	\$385
Ten loads of oats destroyed.....	100
Seven acres of corn on the ground.....	175
Pasture, grass, &c.....	200
Seed and labor.....	150

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KINGS COUNTY, ss :

Henry Reed, being duly sworn, doth depose and say that he made the above estimate, and that he considers the above amount justly due to said Rulif Van Brunt; and that he was acquainted with the facts and circumstances of the case at the time they occurred; and that he has subsequently occupied the same farm; and that he is well acquainted with Rulif Van Brunt, and with John Jackson; and that he has seen a lease or agreement in the possession of the said Rulif Van Brunt, which is in the handwriting of said John Jackson; and further this deponent saith not.

HENRY REID.

Sworn before me this 14th day of October, 1844.

JOHN VANDERBILT,
First Judge, &c.

KINGS COUNTY, ss :

Samuel Ryder, deing duly sworn, doth depose and say that he is acquainted with the circumstances attending the dispossession of Rulif Van Brunt from his premises, at Fort Green, in the year 1814, by the military under the command of General Jeremiah Johnson; and that, in his judgment, the said Van Brunt sustained damages to the amount of ten hundred and fifty dollars or thereabouts.

SAMUEL RYDER.

Sworn before me this 10th day of October, 1844.

JOHN VANDERBILT,
First Judge, &c.

Memorandum of agreement between John Jackson and Rulif Van Brunt :

Said Jackson lets and hires unto above said Van Brunt the house and barn, and the land Israel now has in possession, being about thirty acres, from the first of April, 1814, to the first of April 1815, all the ground to the north of the lane of Samuel Bouten, meeting the south lane of William Cornwell's land; the said Van Brunt is to plough the stalk ground and sow it with oats or barley, and seed it with clover, and plough one other lot for corn or market truck; said Van Brunt covenants and agrees to pay said Jackson three hundred and twenty-five dollars for the use of the same; eighty-one dollars and twenty-five cents on the first day of April, and the remainder in quarterly payments; the said Van Brunt is to remove no manure or thing from the place that belongs to it. I agree to six barrels cider for Mr. Van Brunt, and two barrels apples.

[L. s.] Witness our hands and seals, Brooklyn, February 16, 1814.
JOHN JACKSON.

N. B.—Mr. Borom has liberty to pass the north side with cart to the powder-house.

Received, Brooklyn April 1, 1814, from Mr. Rulif Van Brunt, eighty-one dollars and twenty-five cents for one quarter's rent of place he has hired of me, where Abraham lived.

JOHN JACKSON.

[\$81 25.]

Received from Mr. Rulif Van Brunt eighty-one dollars and twenty-five cents in full for half year's rent of place he lives on.

[\$81 25.]

JOHN JACKSON.

BROOKLYN, *July* 30, 1814.

RULIF VAN BRUNT *vs.* THE UNITED STATES.

I, Rulif Van Brunt, do depose and say that I have made diligent search and inquiry for the witnesses whose depositions are in evidence in the above-entitled cause, and have been informed and believe that Jeremiah Johnson and John Storm are dead; that Henry Reid has become entirely imbecile and childish; that Samuel Ryder removed many years since to some part of Virginia, and his residence is unknown; and of Samuel Doxsey I can obtain no information whatever.

RULIF VAN BRUNT.

Sworn before me this 26th day of November, 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Congress of the United States in Senate and House of Representatives:

Your petitioner, Rulif Van Brunt, now of Rochester, in the State of New York, respectfully sheweth—

That your petitioner in the year 1814 was a resident of Brooklyn, in the county of Kings and State of New York, and was the lessee of a certain lot of land in Brooklyn, aforesaid, from one John Jackson, of the same place, for the term of one year, to wit: from the first day of April, 1814, to the first day of April, 1815, at a rent of three hundred and twenty-five dollars, which rent was duly paid to said John Jackson.

That your petitioner entered upon the said premises on the first of April, 1814, and cultivated the same by putting in a crop of grain and vegetables.

That on the ninth day of August, 1814, the said premises were entered upon by the military authorities of the county, and, as he is informed, by the military raised under the charge of a committee called "the Committee of Defence" of the city of New York; and the said premises were occupied from and after the said ninth day of August,

1814, by the said military, and a fort called "Fort Green" was erected thereon, and the whole premises and the crops grown and growing thereon were taken, appropriated, or destroyed by the said committee, or by the military, or by those acting under their authority, and your petitioner thereby lost his entire crop, his labor, and the rent paid therefor by him.

Your petitioner was informed at the time that the said committee of defence would attend to the settlement of his said claim, and would petition to Congress for relief for him and others whose property was appropriated in like manner; and he is informed and believes that some years ago an application for this purpose was made, and that the papers relating thereto were destroyed in the department at Washington some years ago.

Your petitioner has been unable to expend his earnings for a few years past to prosecute this claim for relief. He has still in his possession the original lease by which said premises were held, and is able to prove by living witnesses of the highest respectability the statement above set forth.

Your petitioner therefore prays that your honorable body would grant him relief in the premises by the passage of a law to reimburse to him the rent paid by him in 1814, with interest thereon, and the value of his crop and labor bestowed at the time it was so appropriated, with interest thereon; and your petitioner will ever pray, &c.

RULIF VAN BRUNT.

KINGS COUNTY, ss:

On this ninth day of October, 1844, personally appeared before me Rulif Van Brunt, to me known to be the person described in the above petition, and made oath that he has heard the above petition read and knows the contents thereof; that the statements made therein are true of his own knowledge, except as to those which are stated upon information and belief, and as to those statements he believes it to be true.

JOHN VANDERBILT,

*First Judge of Kings Co. Court, of Counsel in Sup. Court,
and a Justice of the Peace of said County.*

IN THE HOUSE OF REPRESENTATIVES, July 22, 1854.

Mr. EDGERTON, from the Committee of Claims, made the following report:

The Committee of Claims, to whom was referred Senate bill No. 290, "for the relief of Rulif Van Brunt," made the following report:

The committee have examined this case, and adopt, as their report upon it, an adverse report made at the 1st session of the 31st Congress, from the Committee on Military Affairs.

JANUARY 22, 1850.

The examination of the petition and vouchers in the case of R. Van Brunt's application for damages, has furnished the following facts and result:

The petitioner sets forth that in 1854 he was a resident of Brooklyn, New York; the lessee of 30 acres of land, at a rent charge of \$300 a year. That his premises in September were occupied by a military party, ordered out by the committee of defence of the city of New York. That in occupying, they destroyed his crops, &c., to the amount of \$1,000.

As evidence of the lease, the article of agreement is presented, well authenticated.

As evidence of the payment of rent to the lessor, the petitioner presents two receipts for \$81; each satisfying a half year's rent, terminating in July preceding the fall of the military occupation.

The petitioner presents no vouchers showing the payment of rent for the last half year within which period the damage accrued.

The petitioner shows, by proof, that at some period soon after the damage accrued—as the committee are left to conclude from the certificate of one of the witnesses—the damage was appraised, and for some mysterious reason the petitioner, although a severe sufferer, was overlooked.

All of the facts have brought the committee to the conclusion that if a claim ever did exist, it was a claim against the city or State of New York, and should have been presented for liquidation.

That from the fact that there is no evidence of the payment of rent for the last half year, and the fact that the lessor received assessment of damage for an injury done at the same place, at the same time, and by the same means, it is quite probable that the lessor and lessee adjusted the matter between them.

That the claim, as presented to the committee, shows upon its face evident dishonesty.

IN THE COURT OF CLAIMS.RULIF VAN BRUNT *vs.* THE UNITED STATES.*Brief for claimant.*

The facts in this case are few. On the 16th of February, 1814, the claimant leased of one John Jackson, for the term of one year, from the 1st of April, 1814, to April 1, 1815, at the yearly rent of \$325, a farm of land containing about thirty acres, whereon were a house and barn, and situated in Brooklyn, in county of Kings, in the State of New York. That he entered into the occupancy of said farm in pursuance of said lease, put in crops of oats and corn, and used and appropriated the same to the ordinary purposes of farm cultivation.

On the 2d of September of that year, (1814,) the twenty-second brigade of the New York militia, having been previously ordered into the service of the United States, took forcible possession of the whole of said demised premises by order of General Johnson, the commanding officer, appropriated the same to the use of the United States as camping ground and fort site. The farm was thus occupied until the month of December following.

The barn on the premises was, by order of the commanding officer, occupied as a guard-house. The fortification, called Fort Green, had been previously commenced, as would seem from the petition and the deposition of Doxey, by a military force raised under the charge of the committee called the committee of defence of the city of New York; but the United States troops entered into the occupancy and use of this fort, and the claimant insists that the United States, by directing its forces to occupy Fort Green, and encamp upon these premises, sanctioned, approved, and adopted what had been previously done by the local authorities, and took the responsibility and liability of said authorities off of their hands.

The local authorities had acted on an emergency in a case where the United States was bound to make good the defence, and by following up and completing what had been done for its benefit, the general government, the claimant submits, is liable to the same extent as if its troops had taken possession of the premises in the first instance.

Before the claimant had been at all disturbed, (p. 6, deposition of Doxey,) and prior to the 9th of August, when the first entry by military was made, he had harvested the grain and hay, and these were subsequently taken for the use of the army of the United States by order of General Johnson.

The claimant supposes the law of the case to be well settled. This case falls within the provisions of the act of 1816, and under the fifth section which is as follows:

“When any property has been impressed or taken by public authority, for the *use* or subsistence of the army during the late war, and the same shall have been destroyed, lost, or consumed, the *owner* of such property shall be paid,” &c.

“This provision relates to *every species of property* taken or impressed for the *use* and subsistence of the army not comprehended in any of the preceding classes, and which shall have been in *any manner destroyed, lost, or consumed* by the army, including in its scope all kinds of provisions, *forage, fuel,*” &c.—(American State Papers, vol. 5, entitled “Claims.”)

The claimant insists—

1st. That he is entitled to the whole amount of damages, as proved by the depositions of John Storm and Henry Reid; the use of the farm and the buildings thereon; the corn and oats, the pasturage and grass, the seed and labor, were the property of the *tenant*, and not of the landlord. Of all these, the claimant was “the owner” within the meaning of the act of 1815.

The fact that damages were appraised to Jackson, the landlord, in no respect makes against the claim of the undersigned.

The previous entry by the local military, which was only three weeks prior to the occupation by the United States troops, was merely in anticipation of such occupation by the latter, and the general government adopted the previous acts, and should be held as having ratified and appropriated the prior service as done for its benefit. In this view, it is wholly immaterial to inquire how much of said property was used or destroyed before, and how much after the 2d of September, 1814, when the premises passed into the exclusive occupancy of the United States.

2d. The claimant is at all events entitled to something. He should be paid for the use of the barn and premises from September 2, 1814, and for the "straw, hay, and grain that was in said barn," which were used, according to the evidence of Doxey, by the army of the *United States*.

The removal of the fences, the breaking of the soil, and the construction of Fort Green, were permanent injuries to the freehold, for which the landlord was entitled to compensation. He was "the owner" of the fee. But the property above enumerated, for which damages are now claimed, was the property of the tenant, and belonged to the undersigned, and for which he solemnly asserts he has in no manner been compensated.

The claimant respectfully submits that he should receive the amount of his claim, with interest thereon, and that this honorable court should recommend the same to the favorable consideration of Congress.

RULIF VAN BRUNT.

IN THE COURT OF CLAIMS.

RULIF VAN BRUNT *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF.

Claim for injury done to land and growing crops occupied by plaintiff, by the militia of New York in the service of the United States at Brooklyn, N. Y., in 1814.

FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That in the year 1814, plaintiff was a tenant of John Jackson of a farm in or near the now city of Brooklyn, New York, at the rent of \$325; and for this sum he was to have the use of a house, barn, and farm, and was to render certain services.—(*Lease*, Record, p. 8.)

Second. That there is no evidence that the premises hired by plaintiff were interfered with by the militia prior to September 1814.

Third. There is no evidence that the plaintiff, in fact, paid rent for the premises mentioned for the year 1814.

Fourth. There is no proof of the amount of property belonging to plaintiff actually destroyed by the militia.

The estimates of John Storm and Henry Reid, found at page 7 of

the record, do not prove that the plaintiff lost what they there estimated. Neither of the witnesses testify that he knew what loss was actually sustained by him, but that they estimate the damage sustained by him at certain amounts. They estimate the rent at \$385 per annum, when the lease put in evidence by the plaintiff specifies the rent at only \$325. They do not appear to have taken into the account the fact that the plaintiff had the use of the farm, including the buildings, pasturage, and also the hay and all the early crops, from the 1st of April to 2d of September, 1814.

Fifth. There is no evidence that the damages were estimated at the time of the transaction, or earlier than the year 1844, a period of thirty years thereafter, when the appraisers were not likely to have remembered the quantity of things destroyed or their value.

Sixth. There is no evidence that the plaintiff could not now prove the loss sustained by living witnesses who could be cross-examined.

Seventh. That the damage which was sustained by the owner of the premises is shown to have been appraised at the time by Gen. Johnson and two others, and the presumption is, that said appraisal included the damages to the premises occupied by the plaintiff, and to the crops thereon.

Gen. Johnson certified that the 22d brigade of New York infantry were called into the service of the United States, and encamped at Fort Green "on the *second of September, 1814*, on land then owned by John Jackson, which, with a house and barn, he had rented to Rulif Van Brunt. About half of the land whereon the fort was built, and the land whereon the brigade encamped, is included in the loss of Mr. Van Brunt. *All the fence was removed from the land and the produce of his labors destroyed before the 2d of September.* The dwelling-house was in the possession of a man named Turney, and the barn was occupied as a guard-house by my order, on the *consent of John Jackson.*

"And I further certify that John B. Coles and John Morse, of the city of New York, and myself, appraised the damages sustained by John Jackson and several other persons, occasioned by the occupation of their land for the public service and defence, and that the damage sustained by Mr. Van Brunt was not appraised by us."—(Record, pp. 5, 6.)

Eighth. The property, or at least a portion of it, was out of the possession of the plaintiff at the time it was occupied by Gen. Johnson under and by the consent of Jackson, the owner, and his damage was appraised.

See quotation next above, where it appears that Turney occupied the house, and that the barn was occupied under Jackson; that the fence had been destroyed, and the damaged sustained was appraised to Jackson by Gen. Johnson and others.

Ninth. When appraising the damages at the time sustained by different individuals, if the plaintiff had sustained damages, the same would have then most probably been appraised, and paid to him as well as to others.

Tenth. The damage which actually accrued, appears to have been occasioned by acts committed prior to the 2d of September, 1814, when Gen. Johnson, acting under the United States, took possession

of Fort Green. The proof does not show who committed these acts. They are in no way connected by proof with the United States. The petition shows by whom it was committed. It states: "That on the ninth day of August, 1814, *said premises were entered upon by the military authorities of the county, and, as he is informed, by the military raised under the charge of the committee called the 'Committee of Defence' of the city of New York*; and the said premises were occupied from and after the said 9th day of August, 1814, by the said military, until about the 3d day of December, 1814; and a fort called 'Fort Green,' was erected thereon, which was occupied by the military of the United States, and the whole premises and the crops grown and growing thereon were taken, appropriated, and destroyed by *said committee*, or by the military, or by those acting under their authority."

From this statement it is certain that the injury committed was by the "Committee of Defence of the city of New York," for whose acts the United States were not responsible. Whether this committee was self-constituted or was organized under city or State authority, is not shown. But it is certain that neither the petition nor the evidence in the record shows that said committee was acting under the authority or by order of the United States, and without showing that it acted by such authority, the latter cannot be held responsible.

Eleventh. From these facts it is apparent that the damage was nearly all sustained prior to General Johnson going to the Fort, and that it was occasioned by the acts of persons for whose conduct the United States were in no respect responsible

LEGAL PROPOSITIONS.

FIRST. *The evidence offered on the part of the plaintiff is not such as is competent to prove the facts upon which his claim rests.*

None of the affidavits produced have been taken in this cause. They are *ex parte*, and clearly do not show the whole facts of the case.

It is not shown that there are not now living other persons who can prove all about this claim.

Jackson may be living and within reach, and he must be able to prove the whole facts.

SECOND. *Most of the damage claimed appears to have been sustained by Jackson, the owner, and not by plaintiff, and was appraised to him, and it is fair to presume was paid to him.*

There is no evidence that plaintiff paid rent for the time the troops were at Fort Green, or for any other time. And none that he was ousted either from the house or barn. From the statement of General Johnson, the inference is, that plaintiff was not in possession at the time, but that the whole fell upon Jackson, to whom the damages were appraised. The damages appraised to Jackson doubtless covered all that were sustained at the time of the transaction.

It is fairly inferable that the plaintiff had surrendered possession at or before the militia were stationed at Fort Green under General

Johnson, inasmuch as the occupancy or a portion of it was by Jackson's own permission.

THIRD. *There is no law under which the plaintiff can recover for these damages, if they were actually sustained by him.*

The act of 1816, (3 U. S. L., 291,) to which plaintiff refers in his brief to sustain his claim, is not now in force, and cannot, therefore, lay the foundation of judicial action, even if this case come within the principles of the 5th section of that act, as he supposes. If it applied to plaintiff's case, it would extend to only a portion of the items claimed. His lease was not taken from him, and he had had it for over five months before the militia under General Johnson were stationed there.

There is no evidence that his oats or corn were destroyed, and none that his pasture was injured, and there is no evidence that he had planted seed or lost labor. That act only applied to actual, and not constructive losses, and all damages payable under it were to be paid to the owner. Most of the losses claimed would not have come under this act. The injury was Jackson's and was appraised to him. But whether the law applied to the plaintiff or Jackson, it is not now in force, and this court cannot act under and apply it. Should Congress revive that law, then the plaintiff might be entitled to pay on presenting the proper evidence at the Third Auditor's office. Until Congress revives the law or passes another one to cover the case, the plaintiff cannot obtain compensation for the losses he claims to have sustained, even if he had conclusively proved the same by legal and competent evidence.

FOURTH. *The United States are in no respect responsible for the acts of the committee of defence, who, it seems, occasioned nearly the whole injury complained of.*

If we were to concede that the United States were responsible, under the act of 1816, while practically in force, for the injury occasioned by General Johnson, it is clear that they were not liable for the acts of the New York committee of defence, who were not called into existence by them, and who are not shown to have acted under the direction of the defendants. That committee, or their employers, were alone responsible for the acts complained of, committed by order of the committee.

R. H. GILLET, *Solicitor.*

MARCH 17, 1859.

IN THE COURT OF CLAIMS, JUNE 6, 1859.

RULIF VAN BRUNT *vs.* THE UNITED STATES.

SCARBURGH J., delivered the opinion of the court.

The petitioner states the following case :

He was the lessee from John Jackson of a lot of land in Brooklyn,

in the State of New York, for the term of one year from the 1st day of April, A. D. 1814, till the 1st day of April, A. D. 1815, at a rent of \$325 per annum, which was duly paid.

He entered upon the premises on the 1st day of April, A. D. 1814, and put in a crop of grain and vegetables.

On the 9th day of August, A. D. 1814, the military authorities of the county of Kings, and the military raised under the charge of the "Committee of Defence" of the city of New York, entered upon the demised premises. A fort, called "Fort Green," was erected thereon and occupied by the military of the United States. The whole premises and the crops grown and growing thereon were taken, appropriated, and destroyed by the committee, or by the military, or by those acting under their authority, and the petitioner thereby lost his entire crop, his labor, and the rent paid by him, of the value of \$1,050.

The petitioner in December, A. D. 1844, applied to Congress for relief.

Jeremiah Johnson testifies as follows:

He was the brigadier general of the 22d brigade of the New York State infantry; his brigade was ordered into the service of the United States, and on the 2d day of September, A. D. 1815, encamped at Fort Green. About half the land on which the fort was built, and the land whereon the brigade encamped, was included in the lease to the petitioner. Before the 2d day of September, A. D. 1815, the fence was removed from the land, and the produce of his labor destroyed. The dwelling-house was in the possession of a man named Turney, and by order of the witness, on the consent of John Jackson the barn was occupied as a guard-house.

The witness, with John B. Coles and John Moore, appraised the damages sustained by John Jackson and several other persons, by the occupation of their land for the public service and defence; but the damage sustained by the petitioner was not appraised by them.

Samuel Doxsey testifies as follows:

The petitioner in the year 1814 occupied a farm belonging to John Jackson. Sometime in that year the erection of Fort Green was commenced on the farm, by which the fence was thrown down and the farm turned into a common. In the first part of September in that year the brigade, under the command of Brigadier General Jeremiah Johnson, encamped on the farm and occupied the barn as a guard-house, and used the straw, hay, and grain, in the barn for the purpose of bedding, &c. The petitioner was compelled wholly to abandon the farm, and procure a house for his family and stabling for his stock elsewhere.

The witness is unable to make an estimate of the losses sustained by the petitioner, but feels confident that he suffered serious loss by reason of having to remove from the farm.

John Stone estimates that the petitioner's damages, by reason of the farm he occupied in 1814 being taken for military purposes, at \$960; Henry Reid estimates them at \$960; and Samuel Snyder estimates them at \$1,050, or thereabouts.

The petitioner has filed the deed of lease, and proved its execution by Jeremiah Johnson.

He has also filed two papers purporting to be two receipts from John Jackson to him, the one bearing date the 1st day of April, A. D. 1814, for eighty-one dollars and twenty-five cents, "for one quarter's rent of place he has hired of me, where Abraham lived," and the other bearing date July 30, A. D. 1814, for eighty-one dollars and twenty-five cents, "in full for half year's rent of place he lives on." But there is no proof of the genuineness of these papers, nor is there any proof of the payment of any portion of the rent, unless the petitioner's possession of the premises and the requirement in the deed of lease that \$81 25 should be paid on the 1st day of April, A. D. 1814, can be regarded as affording a presumption of the payment of the first quarter's rent. The residue of the rent was payable quarterly.

On the 2d day of September, A. D. 1814, when the troops in the service of the United States encamped upon the premises, the dwelling-house was in the possession, not of the petitioner, but of John Jackson; and the order to occupy the barn as a guard-house was given with the consent, not of the petitioner, but of John Jackson. Afterwards the damages sustained by John Jackson, by reason of the occupancy of *his* land, were appraised, but no notice was taken of any damages sustained by the petitioner. A period of thirty years elapsed before the petitioner presented his claim, and no explanation is offered to account for his delay. Moreover, the testimony, though now admissible, all the witnesses being either dead or out of the reach of the petitioner, was yet taken, *ex parte*, and is to be received with caution.

Upon these facts we cannot say that when the troops in the service of the United States entered upon the premises the petitioner had any interest in them. In truth they rather sanction a contrary presumption. Our opinion, therefore, is that the evidence does not sustain the petitioner's claim, and that he is not entitled to relief,